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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,329	06/27/2003	Troy D. Batterberry	MS1-1479US	7914
22801	7590	03/04/2005	EXAMINER	
LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			LAU, TUNG S	
			ART UNIT	PAPER NUMBER
			2863	

DATE MAILED: 03/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Office Action Summary

Application No.

10/609,329

Applicant(s)

BATTERBERRY ET AL.

Examiner

Tung S. Lau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>See office action</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The following documents: 'Nishida , congestion control mechanism for TCP with packet scheduling discipline', How large ATM MTU causes deadlocks in TCP data transfer', Performance consideration for TCP data transfer' are not legible from the application file. Applicant is required to submit a legible copy of 'Nishida , congestion control mechanism for TCP with packet scheduling discipline', How large ATM MTU causes deadlocks in TCP data transfer', Performance consideration for TCP data transfer' filed on 2-9-2005 is acknowledged by the examiner, however, the information disclose statement filed 11-10-2003 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. Item 'Nishida , congestion control mechanism for TCP with packet scheduling discipline', How large ATM MTU causes deadlocks in TCP data transfer', Performance consideration for TCP data transfer' are not legible from the application file. Applicant is required to submit a legible copy of 'Nishida , congestion control mechanism for TCP with packet scheduling discipline', How large ATM MTU causes deadlocks in TCP data transfer', Performance consideration for TCP data transfer'. A copy of a signed PTO-1449 dated 11-10-2003 is attached with this office action.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-17, 19-34, 36-51, 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Ravi et al. (U.S. Patent 6,292,834)

Regarding claim 1:

Ravi discloses a method, comprising: connecting to a server to receive streaming content at a first rate (Col. 3, Lines 1-41); receiving a portion of the steaming content at the first rate (Col. 3, Lines 1-41); requesting the server to send a particular amount of future streaming content at a second rate; receiving the particular amount of future steaming content at an actual rate that is greater than the first rate and less than or equal to the second rate (Col. 3, Lines 1-41); determining if the actual rate is viable for receiving the streaming content (Col. 3, Lines 1-41); and if the actual rate is viable for receiving the streaming content, requesting the server to send remaining streaming content at a rate that is not greater than the actual rate (Col. 3, Lines 1-41).

Regarding claim 16:

Ravi discloses a method, comprising: receiving a request from a client to stream content to the client at a first transmission rate (Col. 3, Lines 1-41); streaming content to the client at the first transmission rate (Col. 3, Lines 1-41); receiving a request from the client to increase the streaming to a second transmission rate for a specified amount of content data (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4); streaming the specified amount of content data to the client at the second transmission rate (Col. 3, Lines 1-41); and resuming streaming content to the client at the first transmission rate (Col. 3, Lines 1-41).

Regarding claim 24:

Ravi discloses a system, comprising: an interface to a network that provides at least a connection to a server (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4); a control module configured to receive streaming content from the server at a first streaming rate and request the server to modify the first streaming rate to a second streaming rate for a specified amount of streaming content data (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4); a bandwidth measurement module configured to determine an actual streaming rate resulting from the request to modify the first streaming rate to the second streaming rate (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4), and to determine the adequacy of the actual streaming rate; and wherein the control module is further configured to request the server to stream remaining streaming content at a rate that is not greater than the actual streaming rate if the bandwidth measurement module determines that the actual streaming rate is adequate for

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streaming the remaining streaming content (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4).

Regarding claim 33:

Ravi discloses a system, comprising: a network interface configured to provide at least a connection to a client over a network; one or more multi-bitrate files that store two or more versions of streaming content (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4), each version being configured for transmission at a different streaming rate; and a control module configured to identify a request from the client to modify a first streaming rate at which a version of the streaming content stored in a multi-bitrate file is being transmitted to the client to a second streaming rate for a limited amount of streaming content data (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4).

Regarding claim 38:

Ravi discloses one or more computer-readable media containing computer-executable instructions that, when executed on a computer, perform the following steps: requesting a server to transmit content file data over a network at a first transmission rate (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4); while receiving a portion of the content data at the first transmission rate, requesting the server to transmit a limited portion of the content data over the network at a second transmission rate (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4); receiving the limited portion of the content data from the server at an actual transmission rate which is less or equal to the second

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transmission rate (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4); determining if the network can viably support transmission of the content file data at the actual transmission rate; if the network can viably support transmission of the content data at the actual transmission rate, requesting the server to transmit subsequent content file data at a rate that is not greater than the actual transmission rate (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4); if the network cannot viably support transmission of the content data at the actual transmission rate, receiving subsequent content file data at the first transmission rate; and wherein the transmitted content file data is content file data that is transmitted after the limited portion of content data has concluded transmission subsequent (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4).

Regarding claim 49:

Ravi discloses one or more computer-readable media containing computer-executable instructions that (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4), when executed on a computer, perform the following steps : transmitting content file data to a client over a network at a first transmission rate (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4); receiving a request from the client to transmit a limited portion of content of data to the client at a second transmission rate (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4); transmitting the limited portion of content file second transmission rate data to the client at the transmitting content file data

subsequent to the limited portion of content file data to the client at the first transmission rate (Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4).

Regarding claim 2, Ravi discloses requesting the server to send remaining streaming content at a rate that is not greater than the actual rate (Col. 3, Lines 1-41); Regarding claim 3, Ravi further disclose specifying the first rate (Col. 3, Lines 1-41); Regarding claim 4, Ravi further disclose determining the first rate from a history file that identifies at least one previous rate of connection with the server (Col. 3, Lines 1-41); Regarding claim 5, Ravi further disclose medium rate from the history file (Col. 17-18, Lines 11-2); Regarding claim 6, Ravi further disclose calculating available connection bandwidth to determine the first rate (Col. 3, Lines 1-41); Regarding claims 7, 29, 34, 36, 44, Ravi further disclose a certain number of seconds of streaming content data (Col. 6, Lines 32-48); Regarding claims 8, 31, 46, 51, Ravi further disclose a certain number of data packets of streaming content data (Col. 11, Lines 42-60); Regarding claims 9, 22, 30, 45, Ravi further disclose a certain number of bytes of streaming content data (Col. 6, Lines 32-48); Regarding claim 10, Ravi further disclose receiving the particular amount of future streaming content at the actual rate further comprises detecting an indication of when the particular amount of future streaming data begins (Col. 11, Lines 42-60); Regarding claim 11, Ravi further disclose time stamp (Col. 11, Lines 42-60); Regarding claim 12, Ravi further disclose detecting an indication of when the particular amount of future streaming

data ends (Col. 11, Lines 42-60); Regarding claim 13, Ravi further disclose indication of when the particular amount of future streaming data ends further comprises a certain number of data packets of streaming content data received (Col. 11, Lines 42-60, Col. 6, Lines 32-47); Regarding claim 14, Ravi further disclose wherein the indication of when the particular amount of future streaming data begins further comprises a sequence number of a first data packet of the future streaming data; and the indication of when the particular amount of future streaming data ends further comprises a sequence number of a last data packet of the future streaming data (Col. 6, Lines 32-48, Col. 11, Lines 42-60); Regarding claim 15, Ravi further disclose using at least some of the particular amount of future streaming content received at the actual rate to increase content stored in a content buffer (Col. 3, Lines 1-41); Regarding claim 17, Ravi further disclose providing an indication to the client of when the content streamed at the second transmission rate begins (Col. 3, Lines 1-42);); Regarding claim 19, Ravi further disclose providing an indication to the client of when the content streamed at the second transmission rate concludes (Col. 7, Lines 6-25); Regarding claim 20, Ravi further disclose the specified amount of content data to be transmitted at the second transmission rate is identified as a number of seconds of content data (Col. 6, Lines 32-48);); Regarding claim 21, Ravi further disclose as data packet of the second transmission (Col. 11, Lines 42-60); Regarding claim 23, Ravi further disclose transmitting remaining streaming content at the second rate (Col. 3, Lines 1-41); Regarding claim 25, Ravi further

disclose the second streaming rate is higher than the first streaming rate (Col. 3, Lines 1-25); Regarding claim 26, Ravi further disclose the server has adequately streamed to the client (Col. 3, Lines 1-41); Regarding claim 27, Ravi further disclose derive the first rate from history list (Col. 3, Lines 1-41); Regarding claim 28, Ravi further disclose store the rate in history (Col. 3, Lines 1-41); Regarding claim 32, Ravi further disclose the bandwidth measurement module determines the adequacy of the streaming at the actual streaming rate while content is being streamed to the client over the network at the actual streaming rate (Col. 3, Lines 1-41); Regarding claim 37, Ravi further disclose the control module is further configured to identify a request from the client to transmit streaming content remaining after the limited amount of streaming content data has been streamed at the second streaming rate (Col. 3, Lines 1-41); Regarding claim 39, Ravi further disclose storing the actual rate in a history file associated with the server that contains one or more previous transmission rates at which content file data was adequately received from the server (Col. 3, Lines 1-41); Regarding claim 40, Ravi further disclose storing the actual file history of the previous transmission rate which content file data was adequately from the server (Col. 3, Lines 1-41); Regarding claim 41, Ravi further disclose history of the first rate (Col. 3, Lines 1-41); Regarding claim 42, Ravi further disclose available network bandwidth for transmission (Col. 3, Lines 1-41); Regarding claim 43, Ravi further disclose the contains of the file data in the transmission (Col. 11, Lines 42-60); Regarding claim 47, Ravi further disclose the actual transmission rate is higher

than the first transmission rate (Col. 3, Lines 1-41); Regarding claim 48, Ravi further disclose the actual transmission rate is lower than the first transmission rate (Col. 3, Lines 1-41); Regarding claim 50, Ravi further disclose identify the content file data transmitted at the actual rate (Col. 11, Lines 42-61); Regarding claim 53, Ravi further disclose identifying transmission of the content file data at a specified time (Col. 7, Lines 16-47).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

a. Claims 18, 35, 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ravi et al. (U.S. Patent 6,292,834) in view of Enns et al. (U.S. Patent 6,785,288).

Ravi discloses a method, system, computer readable medium including the subject matter discussed above except flagging the data; Enns discloses flagging the data in order to have flexibility in the management system (Col. 7, Lines 22-33).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ravi to have flagging the data taught by Enns in order to have flexibility in the management system (Col. 7, Lines 22-33).

Response to Arguments

4. Applicant's arguments filed 2/9/2005 have been fully considered but they are not persuasive.

A. Applicant argues in the lengthy arguments that the prior art does not show the 'requesting the server to send a particular amount of future streaming content at a second rate'. Ravi discloses 'requesting the server to send a particular amount of future streaming content at a second rate' in Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4 .

B. Applicant continues to argue in the lengthy arguments that the prior art does not show the 'receiving the particular amount of future streaming contents at an actual rate that is greater than the first rate and less than or equal to the second rate'. Ravi discloses 'receiving the particular amount of future streaming contents at an actual rate that is greater than the first rate and less than or equal to the second rate' in Col. 3, Lines 1-41.

C. Applicant continues to argue in the lengthy arguments that the prior art does not show the 'determining if the actual rate is viable for receiving the streaming content'. Ravi discloses 'determining if the actual rate is viable for receiving the

streaming content' data in Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4.

D. Applicant continues to argue in the lengthy arguments that the prior art does not show the 'if the actual rate is viable for receiving the streaming content, requesting the server to send remaining streaming content at a rate that is greater than the actual rate. Ravi discloses 'if the actual rate is viable for receiving the streaming content, requesting the server to send remaining streaming content at a rate that is greater than the actual rate in Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4.

E. Applicant continues to argue in the lengthy arguments that the prior art does not show the 'requesting the server to send a particular amount of future streaming content at a second rate', 'receiving a request from the client to increase the streaming to a second transmission rate for a specified amount of content data'. Ravi discloses requesting the server to send a particular amount of future streaming content at a second rate', 'receiving a request from the client to increase the streaming to a second transmission rate for a specified amount of content data' in Col. 3, Lines 1-41, Col. 13, Lines 9-25, Col. 11-12, Lines 43-4.

F. Applicant continues to argue in the lengthy arguments that the prior art does not show the 'flagging the data in order to have flexibility in the management system'. Ennis discloses flagging the data in order to have flexibility in the management system' in Col. 7, Lines 22-33.

The examiner reminds to the applicants that during patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). While the meaning of claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allowed. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

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calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung S Lau whose telephone number is 571-272-2274. The examiner can normally be reached on M-F 9-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 571-272-2269. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TL



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